



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,163	02/08/2002	Rex Carswell George Niven	21429-12	8616

33717 7590 10/04/2004

GREENBERG TRAURIG LLP
2450 COLORADO AVENUE, SUITE 400E
SANTA MONICA, CA 90404

EXAMINER

NEILS, PEGGY A

ART UNIT	PAPER NUMBER
----------	--------------

2875

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,163

Applicant(s)

NIVEN, REX CARSWELL
GEORGE

Examiner

Peggy A. Neils

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 8 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 8 and 10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/11/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharrah et al in view of Galli and Australian Design patent 134908. Sharrah et al teaches that it is known in the art to have a safety/warning device with a body 20 which receives batteries 120 and an upper end 200 in which is received a grommet 280 which has first engaging means (flared ends, see page 3, paragraph 0048) which contacts the wall of the body and internal engagement means shown in Figure 11 which receives the LED 285. A lens closes the top of the flashlight device. Galli teaches that it is known in the art to have a battery operated light with an LED as the light source and to include a circuit board 22 in the lighting device. The circuit board includes a first contact 46 and a connection with second contact 50. Element 46 is readable as a contact strip. Rotation of the flashlight head 10 turns the flashlight on and off. The switch is readable as being shock proof. Galli also provides for the circuit board to perform other functions (see page 3, the bottom of paragraph 0024). It would have been obvious to one skilled in the art that Sharrah et al could be modified to include a circuit board with a contact arrangement in the same manner as taught by Galli because both references are directed to battery operated flashlights using an LED

as the light source. In the absence of any unobvious or unexpected results for the switch to be an off-centered switch on the circuit board is a design choice. The Australian design patent shows a Fresnel lens with a depending finger extending down into the interior of the lens housing. It would be obvious the lens of Sharrah et al could be modified to include a Fresnel lens in the same manner as taught by the Australian patent because both references are directed to lighting devices and use the lens/cover of the lighting device to operate the light. In response to Applicant's comments, it was argued that Claim 6 had been incorporated into independent claim 1 by the present amendment. The Examiner had previously indicated that Claim 6 contained allowable subject matter in the last Office action. However, Applicant has not amended Claim 1 to include all the limitations that were in Claim 6 and the intervening claims from which Claim 6 had dependency. That would have included Claims 5, 4, and 3 or 2. Applicant should have indicated in the remarks that the claim had not been fully incorporated. Furthermore, the Australian design patent was recently submitted in a prior art disclosure statement. The disclosure statement was filed on August 11, 2004. Applicant checked the box on the accompanying paper stating that the disclosure statement was being filed within three months of the filing date of a national application other than a continued prosecution application under 37 CFR 1.53(d), or within three months of the date of entry of the national stage as set forth in 37 CFR 1.491 in an international application, or before the mailing date of a first Office action on the merits, and therefore, Applicant believes no fee is required. None of the conditions have been met. The filing date for the application was 2/8/2002 and a first Office action has been

issued. This application is not a national stage application. Applicant did not pay the \$180 fee. The use of a new reference in the final rejection is therefore appropriate.

Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyons in view of Lash et al.

Lyons teaches that it is known in the art to have a safety/warning light with a light source 12 mounted within a lens 10. The light source is positioned within the lens at a height wherein the horizontal center of the light emits light through a smooth surface 30 of the lens and this portion of the lens is positioned between upper 26 and lower 28 portions with both portions having Fresnel lens characteristics. There is also an upper surface 42 with Fresnel characteristics except for a general vertical section 38, which emits a central beam. As shown in Figure 1, the inner surface of the lens cover has a plurality of diffuser elements. Lash et al teaches that it is known in the art to have a warning light with an LED as the light source and to include a circuit board 22 in the lighting device. It would have been obvious to one skilled in the art that Lyons et al could be modified to have an LED as the light source in the same manner as taught by Lash et al because both references are directed to similarly structured lighting devices intended as warning devices. Furthermore, the invention in Lyons is the features of the lens cover and not the type of light source used. LEDs are more efficient and last longer than conventional light sources and would be an obvious substitution.

Applicant's arguments have been considered but are nonpersuasive. Applicant has argued that Lyons does not teach using an LED in the lighting device. Original Claim 11 did not recite the LED.

Oath/Declaration

The objection to the Oath in the last Office action is withdrawn.

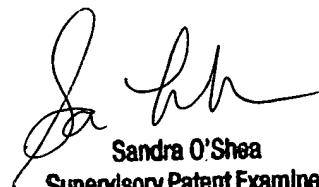
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Saffron et al and Yang et al are cited of interest.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) without the fee set forth in 37 CFR 1.17(p) on August 11, 2004 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any questions regarding this Office action should be directed to Examiner Neils at (571) 272-2377.


Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800